



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R01-OAR-2013-0818; A-1-FRL- 9928-86-Region-1]**

**Approval and Promulgation of Air Quality Implementation Plans; Rhode Island; Decommissioning of Stage II Vapor Recovery Systems and Amending Stage I Vapor Recovery Requirements**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Rhode Island Department of Environmental Management. This revision includes regulatory amendments that allow gasoline dispensing facilities (GDFs) to decommission their Stage II vapor recovery systems as of December 25, 2013, and a demonstration that such removal is consistent with the Clean Air Act and EPA guidance. This revision also includes regulatory amendments that strengthen Rhode Island's requirements for Stage I vapor recovery systems at GDFs. The intended effect of this action is to approve Rhode Island's revised vapor recovery regulation. This action is being taken in accordance with the Clean Air Act.

**DATES:** This rule is effective on **[Insert date 30 days after publication in the Federal Register]**.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R01-OAR-2013-0818. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov)

web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square - Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays.

Copies of the documents relevant to this action are also available for public inspection during normal business hours, by appointment at Office of Air Resources, Department of Environmental Management, 235 Promenade Street, Providence, RI 02908-5767.

**FOR FURTHER INFORMATION CONTACT:** Ariel Garcia, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square, Suite 100 (mail code: OEP05-2), Boston, MA 02109-3912, telephone number (617) 918-1660, fax number (617) 918-0660, email [garcia.ariel@epa.gov](mailto:garcia.ariel@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

- I. Background and Purpose
- II. Response to Comments
- III. Final Action
- IV. Incorporation by Reference
- V. Statutory and Executive Order Reviews

## **I. Background and Purpose**

On October 24, 2014 (79 FR 63591), EPA published a Notice of Proposed Rulemaking (NPR) for the State of Rhode Island. The NPR proposed approval of Rhode Island's revised Air Pollution Control Regulation 11, "Petroleum Liquids Marketing and Storage," that had been amended to allow the decommissioning of Stage II vapor recovery systems and to strengthen Stage I vapor recovery requirements. The formal SIP revision was submitted by the Rhode Island Department of Environmental Management (DEM) on December 13, 2013 and also included a demonstration that the decommissioning of Stage II vapor recovery systems at gasoline dispensing facilities (GDFs) is consistent with the Clean Air Act and EPA guidance.

A detailed discussion of Rhode Island's December 13, 2013 SIP revision and EPA's rationale for proposing approval of the SIP revision were provided in the NPR and will not be restated in this notice, except to the extent relevant to our responses to public comments we received on our proposal.

## **II. Response to Comments**

EPA received one comment on the NPR from Ted Tiberi, ARID Technologies, Inc. That comment is summarized below with EPA's response.

*Comment:* The commenter stated its opposition to EPA's proposed approval of Rhode Island's revised Air Pollution Control Regulation 11. The commenter believes the Clean Air Act (CAA) section 110(l) demonstration included in Rhode Island's December 13, 2013 SIP submittal is flawed and that there are significant emission reduction losses (i.e. "increased emissions") resulting from the removal of the Stage II program requirements in Rhode Island. The commenter submitted graphs and calculations in support of its claims, purporting to show the levels of foregone emissions reduction that would result from implementation of Rhode Island's SIP revision request. The commenter also asserts that the increased emissions represent a significant environmental, health and safety risk, and that a disproportionate share of the risks will be borne by motorists refueling vehicles not equipped with onboard refueling vapor recovery (ORVR) systems.

*Response:* EPA disagrees with ARID Technologies' assertion that Rhode Island's CAA section 110(l) demonstration is flawed and that there will be impermissibly significant increased emissions from this action. Rhode Island's section 110(l) demonstration was performed in accordance with EPA's final rule determining that ORVR is now in widespread use in the national motor vehicle fleet (77 FR 28772, May 16, 2012) and EPA's "Guidance on Removing Stage II Gasoline Vapor Control Programs from State Implementation Plans and Assessing Comparable Measures" (EPA-457/B-12-001, August 7, 2012), hereafter, EPA's August 7, 2012 Guidance (a copy of this guidance has been placed in the public docket for this action).

The Rhode Island rule allows GDFs to decommission Stage II systems as of December 25, 2013, and requires GDFs to decommission their Stage II systems by the end of 2017 unless, by December 22, 2017, a GDF is equipped with an ORVR-compatible Stage II system or installs

air pollution control systems to control tank excess vent emissions resulting from Stage II systems that are incompatible with ORVR. Such GDFs, with Stage II systems operational beyond the December 22, 2017 date, are required to continue to operate and maintain their Stage II vapor recovery systems in accordance with Rhode Island's regulations, until the time when such Stage II vapor recovery system is ever decommissioned. Appendix Table A-1 of EPA's August 7, 2012 Guidance illustrates that by the end of 2017, about 87% of the vehicles in the national motor vehicle fleet will be equipped with ORVR. The number of ORVR-equipped vehicles in Rhode Island will likely be even higher due to Rhode Island having a more accelerated motor vehicle fleet turnover when compared to the national motor vehicle fleet.<sup>1</sup> Appendix Table A-1 also illustrates that by the end of 2017, over 90% of gasoline dispensed nationally will be to ORVR-equipped vehicles, which is also likely to be higher in Rhode Island due to a newer motor vehicle fleet. At that point in time, since a vast majority of Rhode Island vehicles being refueled at gasoline dispensing facilities will be equipped with ORVR systems, the ORVR systems will be controlling the volatile organic compound (VOC) emissions, making Stage II vapor recovery systems a redundant, and potentially incompatible, emissions control technology in Rhode Island. Therefore, removing the Stage II systems is not expected to result in a significant emissions increase, but is expected to avoid emissions increases resulting from the incompatibility of some Stage II systems with ORVR controls.

EPA also disagrees with the comment that the increased emissions the commenter asserts will result from removal of Stage II controls represent a significant environmental, health and safety risk. EPA's August 7, 2012 Guidance states that "EPA believes it is reasonable to

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<sup>1</sup> Rhode Island's December 13, 2013 SIP revision includes an analysis of vehicle registration data obtained from the Rhode Island Department of Motor Vehicles, which illustrates that by December 4, 2012, the fraction of gasoline vehicles in Rhode Island equipped with ORVR was 73.1%. This is a slightly more accelerated fleet turn-over estimate than EPA's end of the 2012 calendar year estimate of 71.4% ORVR penetration in the national gasoline fueled motor vehicle fleet.

conclude that the incremental emissions control that Stage II achieves beyond ORVR is *de minimis* if it is less than 10 percent of the area-wide emissions inventory associated with refueling highway motor vehicles.” As noted in the NPR, Rhode Island appropriately calculated the increase in refueling-associated emissions from the decommissioning of Stage II systems in 2013 as 7.2 percent, thus meeting this *de minimis* threshold. As also noted in the NPR, the increase in emissions from Stage II system decommissioning calculated by Rhode Island for 2013 (69 tons of VOC) are only about 0.3 percent of the total anthropogenic VOC emissions in Rhode Island (see EPA’s 2011 National Emissions Inventory database Version 1 at [www.epa.gov/ttn/chief/net/2011inventory.html](http://www.epa.gov/ttn/chief/net/2011inventory.html)). Also, as explained in EPA’s ORVR rulemaking and in EPA’s August 7, 2012 Guidance, these foregone emissions reductions in the near term continue to diminish rapidly over time as ORVR phase-in continues. Therefore, since the *de minimis* criteria discussed in EPA’s August 7, 2012 Guidance have been met, EPA is approving Rhode Island’s SIP revision.

Furthermore, we note that Rhode Island’s revised Regulation 11 also includes new Stage I vapor recovery requirements that will lead to additional emission reductions. Specifically, the regulation requires GDFs to upgrade their Stage I vapor recovery systems to CARB-certified Stage I Enhanced Vapor Recovery (EVR) systems or a Stage I vapor recovery system composed of EVR system components (Stage I EVR component systems). The upgrade to Stage I EVR systems or Stage I EVR component systems is required upon facility start-up for facilities beginning operation or installing a fuel storage tank as of December 25, 2013. In addition, as of December 25, 2013, any component of a pre-existing Stage I vapor recovery system that is replaced is required to be replaced with a CARB-certified Stage I EVR component. The Rhode Island regulation further requires that all Stage I systems be CARB-certified Stage I EVR systems or Stage I EVR component systems by December 25, 2020. CARB-certified Stage I

EVR systems have been certified to achieve a 98 percent reduction in VOC emissions, as compared to 95 percent for pre-EVR Stage I systems. Thus, when pre-EVR Stage I systems in Rhode Island are replaced with CARB-certified Stage I EVR systems, a greater emission reduction will be achieved. Also, when a component of a pre-EVR Stage I system is replaced with a CARB-certified Stage I EVR component, a somewhat greater reduction is expected to be achieved. These additional reductions will further mitigate any temporary declining emissions increases, which are already *de minimis*, resulting from removal of Stage II equipment.

Finally, with respect to the graphs and calculations submitted as part of ARID Technologies' comments, we note that, in some cases, differing assumptions were used by the commenter as compared to those used by Rhode Island. For example, the ARID Technologies calculations assume a Stage II vapor recovery efficiency of 75 percent, whereas Rhode Island used a more conservative figure of 70 percent. EPA's August 7, 2012 Guidance states that Stage II control efficiencies are typically in the range of 60 – 75 percent. Assuming a higher Stage II efficiency would result in a higher estimate of foregone emission reductions. However, in some cases, the assumptions and/or the basis or references for the assumptions used in the commenter's calculations are not stated. Therefore, we are not, at this time, assessing the appropriateness of each of the individual calculations included in the ARID Technologies documents but instead note that the commenter's summary result of 400,000 lbs (or 200 tons) of hydrocarbon emissions in 2013 (see slide 8 of the commenter's presentation), although higher than the Rhode Island estimate of 69 tons referenced above, is still only about 0.9 percent, i.e., less than one percent, of the 22,248 tons of total annual anthropogenic VOC emissions in Rhode Island (see EPA's 2011 National Emissions Inventory database Version 1 at [www.epa.gov/ttn/chief/net/2011inventory.html](http://www.epa.gov/ttn/chief/net/2011inventory.html)). As also noted above, these foregone emission reductions are highest in 2013 and diminish rapidly over time. Finally, the commenter does not

assert or demonstrate that the foregone emissions reductions based on his assumptions would exceed the *de minimis* criteria discussed in EPA's August 7, 2012 Guidance.

### **III. Final Action**

EPA is approving Rhode Island's December 13, 2013 SIP revision. Specifically, EPA is approving the amended Rhode Island Air Pollution Control Regulation No. 11, "Petroleum Liquids Marketing and Storage," and incorporating it into the Rhode Island SIP. EPA is approving this SIP revision because it meets all applicable requirements of the Clean Air Act and EPA guidance, and it will not interfere with any applicable requirement concerning National Ambient Air Quality Standards attainment and reasonable further progress or with any other applicable requirement of the Clean Air Act.

Rhode Island's December 13, 2013 SIP revision satisfies the "comparable measures" requirement of CAA section 184(b)(2), because as stated in EPA's August 7, 2012 Guidance, "the comparable measures requirement is satisfied if phasing out a Stage II control program in a particular area is estimated to have no, or a *de minimis*, incremental loss of area-wide emissions control." As noted in the NPR, Rhode Island's SIP revision met *de minimis* criteria outlined in EPA's August 7, 2012 Guidance. In addition, since emissions are *de minimis*, the anti-back sliding requirements of CAA section 110(l) have also been satisfied.

### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference Rhode Island's revised Air Pollution Control Regulation No. 11 described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make,



these documents generally available electronically through [www.regulations.gov](http://www.regulations.gov) and/or in hard copy at the appropriate EPA office (see the ADDRESSES section of this preamble for more information).

## **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: May 26, 2015.

H. Curtis Spalding,  
Regional Administrator,  
EPA New England.

Part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

## **PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 et seq.

### **Subpart OO - Rhode Island**

2. In § 52.2070 the table in paragraph (c) is amended by revising the entry for state citation “Air Pollution Control Regulation 11” to read as follows:

#### **§ 52.2070 Identification of plan.**

\* \* \* \* \*

(c) EPA Approved regulations.

#### **EPA-APPROVED RHODE ISLAND REGULATIONS**

<b>State citation</b>	<b>Title/subject</b>	<b>State effective date</b>	<b>EPA approval date</b>	<b>Explanations</b>
**	*	*	*	**
Air Pollution Control Regulation 11.	Petroleum liquids marketing and storage.	12/25/2013	[Insert <b><u>Federal Register</u></b> date of publication]  [Insert <b><u>Federal Register</u></b> citation]	Includes decommissioning of Stage II vapor recovery systems.
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[FR Doc. 2015-13944 Filed: 6/8/2015 08:45 am; Publication Date: 6/9/2015]